THE HUMAN RIGHTS COVENANTS

People illegally imprisoned have been freed, victims of human rights violations have been compensated and national laws have been improved, thanks to two United Nations treaties—the International Covenants on Human Rights.

The Covenants—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—provide protection for specific rights and freedoms. Both have the force of law for the countries that ratify them.

The Covenants have set up a system whereby Governments must report to the United Nations on how they ensure respect for human rights. Under the Optional Protocol to the Covenant on Civil and Political Rights, individuals who feel that their rights have been violated can appeal directly to the United Nations for redress.

The year 1991 marks the 25th anniversary of the adoption of the Covenants. To observe this occasion, the General Assembly will hold a commemorative meeting in honour of the Covenants on 16 December 1991—the day marking the 25th anniversary of their adoption.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The basis for the Covenants is the landmark Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. In it, the representatives of the world's peoples proclaimed that "all human beings are born free and equal in dignity and rights". The Declaration spells out the rights and freedoms of all members of the human family.

The principles of the Declaration were transformed into legally binding norms through the two Covenants and the Optional Protocol. Together, these documents form the International Bill of Human Rights.

These instruments are based on the revolutionary premise that Governments must answer for the way they treat individuals and must be judged by international standards.

The Covenants and the Protocol were adopted by the General Assembly in 1966 and entered into force in 1976. As at 31 March 1991, 99 countries had become parties to the Covenant on Economic, Social and Cultural Rights, 95 had ratified the Covenant on Civil and Political Rights and 52 had ratified the Optional Protocol.

These treaties require States that ratify them to observe the widest range of human rights ever recorded in history.

WHAT THE COVENANTS SAY

The Covenant on Civil and Political Rights recognizes the right of every human being to life, liberty and security; to privacy; to freedom from cruel, inhuman or degrading treatment and from torture; to freedom from slavery; to immunity from arbitrary arrest; to a fair trial; to recognition as a person before the law; to immunity from retroactive sentences; to freedom of thought, conscience and religion; to freedom of opinion and expression; to liberty of movement; to peaceful assembly; and to freedom of association.

The Covenant on Economic, Social and Cultural Rights recognizes the right to work and to free choice of employment; to fair wages; to form and join unions; to social security; to special protection for families, mothers, children and young persons; to adequate standards of living, including food, clothing and housing; to health; to education; and to participation in cultural life.

Both Covenants proclaim the right of all peoples to self-determination, and guarantee the rights they proclaim without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Two United Nations committees, made up of independent experts, monitor State compliance with the rights listed in the Covenants.

UNITED NATIONS

HUMAN RIGHTS COMMITTEE

The Human Rights Committee was established in 1977 in accordance with the International Covenant on Civil and Political Rights. It consists of 18 experts of recognized competence in human rights, who serve in their personal capacities. The experts are elected by secret ballot by States parties to the Covenant and serve for a four-year term.

The Committee examines in public sessions periodic reports from States parties on the measures they have taken to give effect to the rights recognized in the Covenant, on the progress made in the enjoyment of such rights and on any difficulty affecting the implementation of the Covenant.

Representatives of the State concerned present the reports, answer the often detailed and pointed questions by each member of the Committee and may be asked to submit additional information. Many States send high-level delegations—ministers, heads of the judiciary, attorneys general. The Committee then forwards its comments to the State. This dialogue often brings about changes in State law or practice.

The Committee usually meets three times a year and reports to the General Assembly, which takes action on the basis of its recommendations.

THE COMMITTEE AT WORK

At its last session, held in New York in April 1991, the Committee reviewed reports from India, Panama, Sri Lanka, Sweden and the United Kingdom.

The Committee urged India to improve the rights of its citizens during public emergencies; Sweden to improve its laws on aliens, terrorists and drug addicts; Panama to incorporate provisions of the Covenant into domestic law; Sri Lanka to ensure that amendments to its constitution accord with the Covenant; and the United Kingdom to ensure that irreversible human rights statutes are put into place in Hong Kong before its transfer back to China in 1997. China is not a party to the Covenant.

The Committee also requested Iraq to submit a report on the human rights situation in the country, covering in particular its observance of the Covenant's provisions on right to life and liberty, prohibition of torture and the rights of ethnic, religious and linguistic minorities.

Noting that Iraq's periodic report had been due since April 1990, the Committee said it should be submitted without further delay, ''taking into consideration recent and current events affecting the situation of human rights'', for discussion at the Committee's next session.

OPTIONAL PROTOCOL PROCEDURES

Under the Optional Protocol to the Covenant on Civil and Political Rights, individuals who feel they are victims of human rights violations can file a complaint with the Human Rights Committee. The complaint must concern a State that has ratified the Protocol.

If the Committee deems the complaint admissible, it brings it to the attention of the State allegedly violating the Covenant. The State must submit within six months explanations clarifying the matter and indicating the remedy, if any, that it has taken.

Complaints from individuals are considered in closed meetings. Their letters and other documents are confidential. But all final decisions adopted are made public and published in the Committee's annual report. The Committee also reports every year to the General Assembly on its activities under the Protocol.

The cases are examined on their merit, and the Committee states whether or not, in its view, there has been a violation of the Covenant. The views of the Committee are not binding on the States parties.

Normally a complaint should be submitted by the alleged victim. But the Committee may consider a complaint submitted on behalf of the victim when it appears that he was unable to submit it himself.

Before a complaint is considered, the alleged victim should have exhausted all available domestic remedies. But the Committee has stated that this rule applies only to the extent that domestic remedies are available and effective. The State party is required to show that remedies were available to the complainant, and that there was a reasonable prospect that they were effective.

The Committee has also stated that the burden of the proof cannot rest alone on the alleged victim, especially since he and the State do not always have equal access to the evidence, and since often only the State has access to information.

The number of complaints has grown substantially in recent years. Several refer to cases of alleged killings by police, disappearances, torture and arbitrary arrests.

"Some rights are more broken than others," said Committee member Rosalyn Higgins, of the United Kingdom, in a television interview in March 1991. "At the heart of the complaints, we see a great number that deal with issues related to security of the person. The right to be free from torture and physical maltreatment. The right to life—unfortunately, we see cases relating to disappearances. We see quite a few cases making allegations about a lack of fair trial. We also do see some cases . . . about limitations on freedom of speech, or freedom of religion or trade union rights, and freedom of movement."

Even if the Committee's views are not legally binding, the system under the Protocol does yield results through persuasion of States parties.

A special rapporteur was appointed in 1990 to follow up on final decisions. "He has been given the responsibility to identify what happens in every single case where we hand down a [final] decision [on the merits]," Higgins said. "That special rapporteur is now in contact with every single Government, following up on those cases, and will be reporting back on progress. . ."

THE PROTOCOL AT WORK

In 1990, under the Protocol, the Committee decided the case of two Zairian opposition leaders who had been subjected to detention and internal banishment, and found violations of the Covenant. The Committee stated that Zaire was obliged to compensate the complainants, ensure that they could challenge in court the violations they suffered and ensure that similar violations did not occur again.

In another case, the Committee invited Colombia to provide information about investigations on the disappearance of two brothers. It also found that Finland had violated a detainee's right to challenge his detention before a court in the seven days following the issuance of the detention order. Finland was asked to remedy the violation and ensure that similar violations did not occur again. The Finnish Government later informed the Committee that it was implementing the decision.

In two cases where the complainants had been sentenced to death, the Committee held that at the trials their rights had been violated. It thus asked the States parties—Jamaica and Trinidad and Tobago—to release the complainants.

Work under the Protocol started in 1977. Since then, 447 complaints concerning 35 States parties have been registered for consideration. Of these, the Committee expressed its views on 119 and declared 123 inadmissible. Sixty-eight complaints were discontinued or withdrawn, and 136 are pending. In addition, the Committee has several hundred complaints on file and has advised their authors that further information is needed.

The Committee often takes action even before stating its views. For instance, it informs the State party that measures of protection may be desirable to avoid irreparable damage to the complainant.

In one case, the Committee expressed concern over the health of the complainant, requested the State party (Uruguay) to have him urgently examined by a medical board and asked for a copy of the medical report. In many other instances, the Committee has requested States parties to suspend a death sentence pending further examination of the case.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

This Committee, set up in 1985 by the Economic and Social Council, is made up of 18 experts of recognized competence in human rights, serving in their personal capacities. Its members are elected by secret ballot by the Council, from a list of persons nominated by States parties to the Covenant, and serve for a four-year term. This body meets once a year in Geneva.

The Committee monitors the application of the International Covenant on Economic, Social and Cultural Rights. It examines in public sessions periodic reports submitted by States parties on the measures they have adopted and the progress made in observing the rights recognized in the Covenant.

As in the case of the Human Rights Committee, representatives of the States parties present the reports and answer the Committee's questions. After considering the reports and discussing them with the States' representatives, the Committee makes suggestions and recommendations to the Economic and Social Council.

THE COMMITTEE AT WORK

At its last session, held in November-December 1990, the Committee considered reports submitted by Costa Rica, the Dominican Republic, Ecuador, Jordan, Iran and Luxembourg.

Among other things, the Committee observed that the Dominican Republic had carried out mass evictions, in violation of the Covenant's article on the right to housing, and expressed concern at the treatment of Haitian workers in the country. It also called on Ecuador to extend the length of maternity leave, in line with the Covenant. The Committee also expressed concern for certain minority groups in Iran.

GENERAL COMMENTS

The two Committees formulate general comments, which are authoritative interpretations of the application and content of articles of the Covenants and are meant to assist States parties in implementing them.

The Human Rights Committee has so far adopted 19 such comments, dealing with such matters as the right to life, the protection of the family and children, the position of aliens, procedural guarantees for the accused and non-discrimination.

The Committee on Economic, Social and Cultural Rights has so far adopted three general comments. In its general comment on measures of international technical assistance, the Committee noted that many activities undertaken in the name of development have later been recognized as ill-conceived and even counter-productive in human rights terms, and that development cooperation activities did not automatically contribute to promoting respect for economic, social and cultural rights.

The Committee recommended that United Nations organs and agencies should recognize the intimate relationship between development activities and efforts to promote respect for human rights in general, and economic, social and cultural rights in particular; that United Nations agencies should consider preparing "human rights impact statements" for all major development activities; that United Nations personnel should be trained in human rights standards and principles; and that at each phase of a development project the rights contained in the Covenants should be taken into account.

NGO ROLE

Several non-governmental organizations (NGOs) collaborate with the two Committees. NGOs send observers to the Committees' meetings and submit written statements.

In dealing with specific human rights cases, the United Nations often calls on NGOs to supply information. NGOs have responded generously, providing large amounts of useful information and making the task of the United Nations easier.

Specifically, the Economic and Social Council in 1987 invited NGOs in consultative status to submit to it written statements which might contribute to the full and universal realization of the rights contained in the Covenant on Economic, Social and Cultural Rights.

GLOBAL INFLUENCE

The Human Rights Declaration and the Covenants have exercised a profound influence on individuals and Governments all over the world.

They have had a deep impact on legal thought and practice world-wide. The principles contained in those instruments have been included in the constitutions and national laws of many States, thus ensuring concrete legal protection of human rights.

National and local tribunals have often cited principles set out in the Declaration and the Covenants in their decisions. Judges of the International Court of Justice have invoked principles contained in these documents as a basis for their opinions.

The Committees have had an equally wide influence. Thanks to their intervention, detainees have been released, executions have been suspended, prisoners have been examined by doctors and national laws have been amended so as to bring them into line with international standards.

Canada, Spain and Venezuela, among others, have reported new legislation influenced or impelled by discussions of the Human Rights Committee.

The Human Rights Committee "has a certain impact—not the same on all States," said its Chairman, Fausto Pocar of Italy, at a recent press conference at United Nations Headquarters. "But through our system of monitoring States, when we have the next report [from a State] we can see some changes.

"We make a lot of suggestions in our reports," he said. "Sometimes States follow our suggestions. Even if decisions on individual complaints are not legally and formally binding, States sometimes report that they have given compensation to victims, or changed legislation.

"The Committee has succeeded in having dialogue with most States parties," he added. "This is not in the Covenant. The Covenant only says that States submit reports, and the Committee discusses them. The Covenant doesn't say that there may be public discussion with countries. The dialogue is not always excellent, but has always taken place. In most cases the dialogue has been fruitful."

"When in 1966 the two Covenants were approved, we didn't know where it would lead," said Nisuke Ando of Japan, the Rapporteur of the Human Rights Committee, at the same press conference. "Now we have established this dialogue, through which problems in many countries have come to light and can be addressed on a continuous basis. We can ask how things are going. States have to respond to Committee questions on particular situations.

"In many countries, the Covenant is part of domestic law," he added. "Lawyers are quoting the Covenant's provisions in their work to protect human rights."

THE SECOND PROTOCOL

In 1989 the General Assembly adopted and opened for signature the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

The Protocol binds States parties not to execute anyone within their jurisdiction. Each State party must take all necessary measures to abolish the death penalty.

Abolition of the death penalty should be considered as progress in the enjoyment of the right to life, the Protocol states. Its abolition contributes to enhancing human dignity and to developing human rights, it adds.

Under article 5 of the Second Optional Protocol, individuals subject to the jurisdiction of States that have ratified the First Optional Protocol

may also address complaints of violations of the Second Optional Protocol to the Human Rights Committee.

The Assembly has called on all Governments in a position to do so to consider becoming parties. As at May 1991, the Protocol had been ratified by 10 States. It enters into force in July 1991.

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HOW TO APPEAL UNDER THE OPTIONAL PROTOCOL

Communications intended for handling under the First Optional Protocol to the Covenant on Civil and Political Rights should be addressed to:

Human Rights Committee
c/o Centre for Human Rights
United Nations Office
1211 Geneva 10, Switzerland

The First Optional Protocol applies to States parties to it. As at 20 May 1991, these States were Algeria, Argentina, Austria, Barbados, Bolivia, Cameroon, Canada, Central African Republic, Colombia, Congo, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Equatorial Guinea, Finland, France, Gambia, Hungary, Iceland, Ireland, Italy, Jamaica, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malta, Mauritius, Mongolia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, Philippines, Portugal, Republic of Korea, Saint Vincent and the Grenadines, San Marino, Senegal, Somalia, Spain, Suriname, Sweden, Togo, Trinidad and Tobago, Uruguay, Venezuela, Zaire and Zambia.

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